IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 85 of 2007
WITH
COMPANY PETITION No. 86 of 2007
WITH
COMPANY PETITION No. 87 of 2007
WITH
COMPANY PETITION No. 88 of 2007
WITH
COMPANY PETITION No. 89 of 2007
WITH
COMPANY PETITION No. 128 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ Sd/-

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1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2.	To be referred to the Reporter or not ?	**NO**
3.	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5.	Whether it is to be circulated to the civil judge ?	**NO**

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RAMASAGAR INFRASTRUCTURE PRIVATE LIMITED - Petitioner
Versus
. - Respondent

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Appearance :
MR MIHIR JOSHI, SENIOR ADVOATE WITH MR SANDEEP SINGHI FOR SINGHI & CO for Petitioners.
MR HARIN P RAVAL for Respondent.
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 29/11/2007
COMMON ORAL JUDGMENT

1. These are the petitions filed by 6 petitioner companies for sanction of the scheme of arrangement in the nature of amalgamation of RAMASAGAR INFRASTRUCTURE PRIVATE LIMITED, NACHIKET PROPERTIES PRIVATE LIMITED, MANJARI (THALTEJ) COMPLEX PRIVATE LIMITED, SHAHARSH INFRASTRUCTURE PRIVATE LIMITED & GANESH INFRASTRUCTURE PRIVATE LIMITED, the Transferor Companies with GANESH HOUSING CORPORATION LIMITED, the Transferee Company under Section 391 read with Section 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act'). All the petitioner Companies belong to the same group of management.

2. The Transferor Companies and the Transferee Company belong to the same group of management and are engaged in the same business and the proposed

amalgamation will synergies the resources, improve economics of scale and promote the potential for growth. The Transferor Companies are having basic resources, land and project permission whereas the Transferee Company has the potential to give shape to such large scale projects through its financial, human and business resources. The proposed amalgamation will enhance the ability of the Transferor Companies and the Transferee Company to enhance value by executing large scale real estate development projects. The Transferor Companies will be able to see more growth by amalgamating with the Transferee Company since both complement each others line of business and the Transferee Company with its resources will be able to utilise the potential of the Transferor Companies with the benefit of all. Thus, the amalgamation would be in the mutual advantage of both Transferor and the Transferee Companies.

3. Vide order dated 10.04.2007 passed in Company Application No. 167 of 2007 in the matter of RAMASAGAR INFRASTRUCTURE PRIVATE LIMITED, the meetings of Equity Shareholders and Unsecured Creditors were dispensed with. There are no Secured

Creditors.

4. Similarly, vide order dated 10.04.2007 passed in Company Application No. 168 of 2007 in the matter of NACHIKET PROPERTIES PRIVATE LIMITED, the meetings of Equity Shareholders and Unsecured Creditors were dispensed with. There are no Secured Creditors.

5. Similarly, vide order dated 10.04.2007 passed in Company Application No. 169 of 2007 in the matter of MANJARI (THALTEJ) COMPLEX PRIVATE LIMITED, the meetings of Equity Shareholders and Unsecured Creditors were dispensed with. There are no Secured Creditors.

6. Likewise, vide order dated 10.04.2007 passed in Company Application No. 170 of 2007 in the case of SHAHARSH INFRASTRUCTURE PRIVATE LIMITED, meetings of Equity Shareholders and Unsecured Creditors were dispensed with. There are no Secured Creditor.

7. Likewise vide order dated 10.04.2007 passed in Company Application No. 171 of 2007 in the case of GANESH INFRASTRUCTURE PRIVATE LIMITED, meetings of Equity Shareholders and Unsecured Creditors were dispensed with. There are no Secured Creditors.

8. Likewise vide order dated 10.04.2007 passed in Company Application No. 172 of 2007, in the case of GANESH HOUSING CORPORATION LIMITED, the Transferee Company, this Court directed the convening of the meeting of the Equity Shareholders on 26.05.2007. This Court has dispensed with the meetings of Secured and Unsecured Creditors of the Company in view of the fact that their rights and interest in the Company are not affected by the Scheme of Amalgamation as proposed. Notice of the meeting was published in '**Indian Express**' and '**Divya Bhaskar**' on 19.04.2007. Individual notices were dispatched to equity shareholders on 25.04.2007. The Chairman of the meetings of Equity Shareholders has filed his report on 05.06.2007 certifying that the Equity Shareholders have approved the scheme with requisite majority.

9. Thereafter the present Company Petitions are filed separately by the Transferor Companies as well as by Transferee Company. Company Petitions filed by the Transferor Companies were admitted on 20.04.2007 and Company Petition filed by the Transferee Company was admitted on 19.06.2007 and the order regarding advertisement was passed and the advertisement was directed to be published in '**Indian Express**' – English daily and '**Divya Bhaskar**' – Gujarati daily – both in Ahmedabad editions. Notice to the Regional Director, Department of Company Affairs, Western Region, Everest, 5th Floor, Bombay was issued in the case of Transferor as well as Transferee Companies. Notice to the Official Liquidator was also issued in the case of Transferor Companies and the Official Liquidator was permitted to avail of the services of the Chartered Accountant, the expenses of which may be borne by the Transferor Companies. The Official Liquidator is also directed to submit his report on the affairs of the Company. Publication in the Government Gazette was dispensed with in all cases of Transferor as well as Transferee Companies.

10. Pursuant to the order dated 19.06.2007, the Official Liquidator has filed his separate reports in all Transferor Companies. In Company Petition No. 85 of 2007, the Official Liquidator has reiterated the observations made by the Chartered Accountant in paragraph 22 of his report. It is stated therein that during the course of their observation of Books of Accounts, they found that during the year 2004 – 05, the Company has paid Rs.4 Lacs towards cost of improvement of property (Land). Necessary supporting documents / evidence for this payment was not produced before them. The Official Liquidator has further submitted that the Chartered Accountant appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of the Company has reported that on the basis of the information and according to the explanations given to them and the books of accounts produced before them, and subject to their observations in paragraph 22 of their report, the acts and transactions of the Company were conducted within the objects mentioned in the Memorandum of Association of the Company and that the affairs of the Company have not been conducted in a

manner prejudicial to the interest of the members or the public interest.

11. In Company Petition No. 88 of 2007, the Chartered Accountant appointed by the Official Liquidator has observed in paragraph 19 of his report that the land was earlier purchased by Shaharsh Co-operative Housing Society Limited. Thereafter, the Society was converted into Private Limited Company. Hence, the date of purchase was considered as the date of incorporation of the Company which is August 26, 2002. The Chartered Accountant has further observed that the land at serial No. 1 of the table given by him in his report was sold on 04.09.2006 through Banakhat at the rate of Rs.1,000/- per Sq. Mtr. The rate at which the land was sold was law when compared to valuation of other land (in nearby area) done by approved Valuer, Amit B. Rami on 30.09.2006. The Valuation Report was attached with Deloitte Haskins & Sell's report dated 27.02.2007. The rate at which the property was valued was Rs.17,941/- per Sq. Mtr. which is quite high as compared to the land sold. The Chartered Accountant further observed that the land at Serial Nos. 2 & 3 of the table was purchased

through Banakhat at the rate of Rs.390/- and Rs.400/- per Sq. Mtr. respectively in September 2006 and the valuation of the said property was done by Valuer, Amit B. Rami on 30.09.2006. The Valuation Report was attached with Deloitte Haskins & Sell's report dated 27.02.2007. The rate at which the land was valued was Rs.8,611/- per Sq. Mtr. which was high as compared to the land purchased. The date of purchase and valuation both falls in the same month i.e. September, 2006. Based on this report of the Chartered Accountant, the Official Liquidator has stated in his report that the Chartered Accountant appointed for the purpose of scrutiny and investigation of the books of accounts and affairs of the Company submitted that on the basis of the above information and according to the explanations given to them and the books of accounts produced before them and subject to their remarks and observations at paragraph 19 of their report, they reported that the acts and transactions of the Company were conducted within the objects mentioned in the Memorandum of Association of the Company and that the affairs of the Company have not been conducted in a manner prejudicial to the interest of the members or to public

interest.

12. So far as the remaining three Transferor Companies are concerned, the Chartered Accountant has not made any special observation and the Official Liquidator has also opined that the affairs of the Company have not been conducted in a manner prejudicial to the interest of the members or to public interest.

13. Pursuant to the notice issued to the Regional Director, Mr. P.S. Saple, Assistant Registrar of Companies from the office of the Registrar of Companies has filed common affidavit in all these petitions wherein following objections were raised :-

A) "The Transferee Company may be restricted not to utilise/club the authorized capital of all the Transferor Companies and if necessary, Transferee Company be directed to increase its authorized capital as aper the provisions of the Companies Act, 1956.

B) All the petitioner Companies may be directed to furnish their latest financial position before this Court at the time of hearing.

C) Upon the Scheme becoming effective, all Equity Shares issued by the Transferor Companies and held by the Transferee Company and its Nominees shall stand cancelled and extinguished. For this purpose, approval of this Court is required."

14. In response to the objection raised by the Official

Liquidator in his report filed in Company Petition No. 85 of 2007, an affidavit is filed by Mr. Shekhar Patel, Director of the Company and stated that the petitioner Company had paid Rs.4 Lacs towards settlement as recorded in the purshish filed in Civil Suit No. 09 of 1990. A copy of the purshish dated 13.08.2004 along with the order passed by the Civil Court (Senior Division), Ahmedabad (Rural) was annexed.

15. So far as the objection raised by the Official Liquidator in his report filed in Company Petition No. 88 of 2007 is concerned, an affidavit-in-reply is filed by Mr. Shekhar Patel, Director of the Company and stated that the observations made by the Chartered Accountant are vague and are based on inferences. While making the observations, the Chartered Accountant has neither shown in the report as to how such transactions are prejudicial to the interest of the shareholders of the Company or to the public interest nor he has produced any material on record to suggest that the affairs of the Company have been conducted in a manner prejudicial to the interest of the shareholders or to the public interest. He has further stated that the Chartered

Accountant, while making observations with regard to valuation of the land sold by the petitioner Company has not even stated as to how the lands are comparable. In fact, two lands are situated near 2 to 3 Kms. away from each other. The prices for sale or purchase of land would depend upon large number of factors which have not been looked into by the Chartered Accountant while making his observations in this regard. He has further stated that neither the shareholders of the petitioner Company nor the shareholders of the Transferee Company have raised any objections to the scheme of amalgamation. No persons concerned with the Scheme have raised any objections to the Scheme before this Court. It is, therefore, submitted that the observations made by the Chartered Accountant are in the form of mere general observations without showing as to how the said transactions are prejudicial to the interest of the shareholders or to the public interest.

16. So far as the objections raised by the Regional Director are concerned, an affidavit-in-reply is filed by Mr. Vijay Ratnakant Lalaji, Company Secretary of Ganesh Housing Corporation, the Transferee Company. He has stated

that neither in the Scheme nor in the petition, the Transferor Companies or the Transferee Company have prayed for utilizing or clubbing the authorized capital of the Transferor Companies. The authorized capital of the Transferee Company is adequate and no increase in the authorized capital of the Transferee Company is necessary. So far as the second objection regarding production of latest financial position of the Companies is concerned, the provisional unaudited annual accounts for the year 2006 – 07 of the Transferor Companies and the Transferee Company are annexed along with the said affidavit. So far as the third objection is concerned, it is stated in the said affidavits that the Transferee Company is not holding any shares in the paid up capital of any of the Transferor Companies and, therefore, the question of cancellation or extinguishment of shares does not arise.

17. On completion of the pleadings between the parties, when petitions are taken up for final hearing, an order was passed by this Court on 15.10.2007 directing the petitioner Companies to make their stand clear as to whether they are in a position to produce the consent letters or they are desirous to move an appropriate

application for holding of the meeting of the Creditors for consideration of the Scheme of Amalgamation or otherwise. Accordingly, Company Applications No. 491 to 495 of 2007 are filed before this Court by the Transferor Companies seeking direction for holding of meeting of Unsecured Creditors. Accordingly, the Court has passed separate orders in each of these applications on 24.10.2007 issuing directions for holding of meetings of Unsecured Creditors. Accordingly, meetings were held on 22.11.2007 and Chairman has filed his report certifying that the Unsecured Creditors of each of these Transferor Companies have approved and agreed to the Scheme of Amalgamation unanimously.

18. I have heard Mr. Mihir Joshi, learned Senior Counsel appearing with Mr. Sandeep Singhi for Singhi & Co. for the petitioner Companies and Mr. Harin P. Raval, learned Assistant Solicitor General appearing for the Central Government. Submissions have been made by him explaining the issues raised by the Official Liquidator as well as the Assistant Registrar of Companies based on the report of the Chartered Accountant as well as the Regional Director respectively.

Considering the same along with the affidavits placed on record, I am satisfied that the observations made by the Registrar of Companies and the Official Liquidator are not sustainable and the Scheme of arrangement would be in the interest of Companies, its members and Creditors. The prayers in terms of para 17-A in Transferor Companies and prayer 39-A in Transferee Company are hereby granted.

19. The petitions are disposed of accordingly. So far as the costs to be paid to learned Assistant Solicitor General is concerned, the same is quantified at Rs.3,500/- per petition. The same may be paid to Mr. Harin Raval, learned Assistant Solicitor General directly.

Sd/-
[K. A. PUJ, J.]

Savariya